

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOEL A. SMITHERS,

Defendant.

No. 1:17-mj-143  
Abingdon, Virginia  
September 5, 2017

TRANSCRIPT OF PRELIMINARY EXAMINATION PROCEEDINGS  
BEFORE THE HONORABLE PAMELA MEADE SARGENT  
UNITED STATES MAGISTRATE JUDGE.

APPEARANCES:

For the Government:

STEVEN RANDALL RAMSEYER  
United States Attorneys Office  
180 West Main Street, Suite B19  
Abingdon, VA 24210  
276-628-4161

For the Defendant:

CHARLES YANCEY SIPE  
O'Hagan Meyer, PLLC  
411 East Franklin Street, Suite 500  
Richmond VA 232219  
804-403-7127

Transcribed by: Carol Jacobs White  
Registered Diplomat Reporter  
P.O. Box 182  
Goode VA 24556

Proceedings recorded by FTR; computer-assisted transcription.

1 (Call to Order of the Court at 3:06 p.m.)

2 THE COURT: The Court has before it this afternoon the  
3 case of *United States of America versus Joel A. Smithers*. It is  
4 Case No. 1:17-mj-143.

5 Mr. Smithers appeared before the Court based on his  
6 arrest back on -- give me just one moment -- on August the 15th. I  
7 appointed counsel for him for the proceedings that occurred that  
8 day: the initial appearance and the bond hearing.

9 It was set over for today for a preliminary  
10 examination/probable cause hearing. And prior to this hearing,  
11 counsel has now entered an appearance on his behalf.

12 Mr. Sipe, am I --

13 MR. SIPE: Sipe. Yes, ma'am.

14 THE COURT: -- am I saying it correctly --

15 MR. SIPE: You are.

16 THE COURT: -- Mr. Sipe.

17 And, Mr. Sipe, you are entering a general appearance in  
18 the case; correct?

19 MR. SIPE: Yes, ma'am.

20 THE COURT: All right. So I will make sure that an order  
21 is done releasing Ms. Dickenson from any further service in the  
22 case.

23 And you are present today and we're prepared to go  
24 forward today with the probable cause hearing; correct?

25 MR. SIPE: Yes, ma'am.

1 (Off-the-record discussion between Court and clerk.)

2 THE COURT: All right. Is the government prepared to  
3 proceed, Mr. Ramseyer?

4 MR. RAMSEYER: Yes, Your Honor. The government relies on  
5 the affidavit submitted with the criminal complaint.

6 THE COURT: All right. I have the criminal complaint  
7 before me and the affidavit. And, of course, it was sworn to  
8 before me. So I have that.

9 All right. Is the agent here who swore the complaint?

10 MR. RAMSEYER: Yes, Your Honor.

11 THE COURT: All right. Mr. Sipe, would you like to call  
12 the agent with regard to the complaint?

13 MR. SIPE: Yes, ma'am.

14 THE COURT: All right. Ma'am, if you'll step forward,  
15 please. If you'll step right up here, please. And raise your  
16 right hand so you can be sworn.

17 ANITA SOWERS, DEFENSE WITNESS, SWORN

18 MR. SIPE: Judge, would you rather me be at the lectern  
19 or here --

20 THE COURT: I think it is just a little easier if you're  
21 at the lectern.

22 And I started to apologize to you, but I don't feel so  
23 bad, because you swore to it telephonically, so I never actually  
24 saw you; is that correct?

25 THE WITNESS: That is correct. Yes, ma'am.

## SOWERS - DIRECT

1 THE COURT: Okay. So now I don't feel so bad. Okay.  
2 You may, Mr. Sipe.

3 DIRECT EXAMINATION

4 BY MR. SIPE:

5 Q. Ma'am, do you -- I'm sorry. Are you ready?

6 A. Yes, sir.

7 Q. You are Anita Sowers?

8 A. Yes, sir.

9 Q. And back in March of 2017 how were you employed?

10 A. I am a TFO, which is a task force officer, through the DEA  
11 through my police department in Martinsville, Virginia.

12 Q. Okay. And in that capacity you drafted and then filed the  
13 affidavit for the arrest warrant in this case?

14 A. Yes, sir, I did.

15 Q. I want to just ask you a couple questions. So you executed  
16 that affidavit on March 7, 2017?

17 A. The search warrant on March 7th, yes, sir.

18 Q. Yes.

19 And then, in executing that search warrant, you and other task  
20 force officers searched Mr. Smithers' or Dr. Smithers' automobile?

21 A. Actually, I was on another search warrant. We did  
22 approximately three search warrants that day. But I was later on  
23 at the search warrant for Dr. Smithers' office.

24 Q. The search warrants were all --

25 MR. RAMSEYER: Your Honor, if I may, I just want to

## SOWERS - DIRECT

1 object for a minute. I think -- it is more of a clarification.

2 You were asking -- was the question about the arrest  
3 warrant or the search warrant? Because Ms. Sowers was the affiant  
4 for the arrest warrant.

5 THE COURT: But not the search warrant.

6 MR. RAMSEYER: But not the search warrant.

7 MR. SIPE: I'm not asking about the search warrant.

8 MR. RAMSEYER: Okay. I thought you said something about  
9 that, because of the March date. Okay. I apologize for that.

10 BY MR. SIPE:

11 Q. You-all executed the arrest warrant in August; correct?

12 A. Yes, sir, in August.

13 Q. And in doing that, were you -- was that based on a search of  
14 Dr. Smithers' automobile?

15 A. Yes, sir.

16 Q. And his home?

17 A. Yes, sir.

18 Q. And his office?

19 A. Yes, sir.

20 Q. And the information concerning the pills and the currency that  
21 was confiscated, that was all found in the automobile?

22 A. Yes, sir.

23 Q. There's no mention in the August affidavit concerning anything  
24 found at either of the other two locations; correct?

25 A. No, sir.

## SOWERS - DIRECT

1 Q. Now, at the time of the arrest warrant, was -- in August of  
2 2017, you-all conducted an interview with Dr. Smithers?

3 A. I did not. Other agents had conducted an interview.

4 Q. Was he advised of his *Miranda*?

5 A. I don't know. I was not present during that interview.

6 Q. Do you know if that occurred?

7 A. I do not know.

8 Q. Okay. Do you know if he gave a written statement?

9 A. I do not know if it was a written statement or not.

10 Q. Now, the -- in looking at your affidavit, in looking at the  
11 pills that were found, there was a number of them in four ziplock  
12 baggies?

13 A. Yes, sir.

14 Q. And Dr. Smithers was able to -- or explained to you that those  
15 had been given back to him by a patient in order to be disposed of?

16 A. That was explained to another agent; yes, sir.

17 Q. Okay. And, in fact, the task force or you or the other agent  
18 actually spoke to that patient and that was corroborated?

19 A. Other agents did, or task force officers; correct.

20 Q. And so that -- the destruction of those pills -- or the reason  
21 behind those pills being in Dr. Smithers' possession was  
22 corroborated by that former patient; correct?

23 A. Yes, sir.

24 Q. Now, in the four months -- or at any time between March of  
25 2017 and August of 2017 did you or the task force or any other

## SOWERS - DIRECT

1 agents speak to any other patients about that similar scenario?

2 A. I do not know that answer.

3 Q. There's a reference in there to speaking to a Wendell Wilson,  
4 who is the compliance officer for Dr. Smithers' practice group?

5 A. Yes, sir.

6 Q. Did you speak to him?

7 A. I did not. Other agents did.

8 Q. And was he able to confirm that patients would return  
9 narcotics in order to be disposed?

10 A. Yes, sir.

11 Q. Now, the money that was seized -- and there's nothing in your  
12 affidavit indicating any actual distribution; correct?

13 A. Yes, there is.

14 Q. Okay. Can you point that out to me?

15 A. The distribution due to the packaging of the -- of presumably  
16 oxy (inaudible).

17 Q. But nobody who you've spoken with who said they actually  
18 received narcotics from him?

19 A. Not that I know of.

20 Q. Okay. You are just -- when you say "distribution," you are  
21 referencing the packaging?

22 A. Correct.

23 Q. Which includes the ziplock baggies; am I right?

24 A. Correct.

25 Q. With the currency that was seized, did you or the task force

## SOWERS - CROSS

1 or any of the agents do anything to determine if the money that you  
2 seized were actual receipts from the practice group?

3 A. I do not know the answer to that.

4 MR. SIPE: Those are all the questions I have, Your  
5 Honor.

6 THE COURT: Mr. Ramseyer, further questions?

7 CROSS-EXAMINATION

8 BY MR. RAMSEYER:

9 Q. Just to be clear, you did not swear out the March search  
10 warrant; is that correct?

11 A. No, sir; I did not.

12 Q. You are the affiant for the arrest warrants?

13 A. Right, the arrest warrant only in August.

14 Q. Thank you.

15 MR. RAMSEYER: I have nothing further.

16 THE COURT: Anything further of the witness?

17 MR. SIPE: No, ma'am.

18 THE COURT: All right. You may step down. Thank you.

19 All right. Mr. Ramseyer, based on the testimony of the  
20 witness, does the government wish to present any other evidence?

21 MR. RAMSEYER: No, Your Honor.

22 THE COURT: All right. Any argument on the probable  
23 cause issue, gentlemen?

24 MR. SIPE: Just a little, Your Honor. I know we're at  
25 -- what stage we're in in the proceeding, but we would suggest that



1     there's insufficient testimony or evidence of a possession with  
2     intent to distribute narcotics. What we have is some narcotics  
3     that were found in Mr. -- Dr. Smithers' vehicle and -- and in the  
4     way that they were packaged. However, an explanation for why they  
5     were packaged that way and how they came into Dr. Smithers'  
6     possession was given to the agents and then actually corroborated  
7     by the patient. And that's contained in the affidavit.

8             There's no suggestion of -- that any of the other pills  
9     were not obtained in a similar fashion. And that is pills -- I'll  
10    call them narcotics -- pills that were in Dr. Smithers' possession  
11    that were obtained from patients and were to be disposed of  
12    appropriately.

13            And then the currency, while it is not insignificant,  
14    there was no effort to determine whether that currency matched  
15    receipts from the business for actual patient care that had taken  
16    place.

17            So when we talk about possession with intent to  
18    distribute, I think that there's an insufficiency on that basis  
19    alone.

20            THE COURT: Mr. Ramseyer, do you want to address that?

21            MR. RAMSEYER: Yes, Your Honor.

22            It is important that -- in this case, that the pills were  
23    not in pharmaceutical bottles. They were not -- if the patient  
24    brought them back, presumably in the bottle, they are not in them  
25    anymore. And they are not in the clinic. They are in

1 Mr. Smithers' car, in his backpack, and some of them stored  
2 -- obviously were -- seemed to be packaged for resale, with the  
3 baggies. So we believe there is probable cause that it was  
4 possession with intent to distribute.

5 THE COURT: Well, let me ask you this: Just the mere  
6 fact that there might be evidence that conflicts with evidence that  
7 would show probable cause, that doesn't defeat the probable cause,  
8 does it?

9 MR. RAMSEYER: No, Your Honor.

10 THE COURT: I mean, I understand that the defendant may  
11 come forward with evidence that if the case went forward might  
12 refute the charge, but that does not, I think, under the case law,  
13 take away from a finding of probable cause, does it?

14 MR. RAMSEYER: No, it does not, Your Honor.

15 THE COURT: And if I'm correct -- I mean, there were -- I  
16 understand the evidence of the distribution is the packaging along  
17 with the cash, but, wow, I mean, these pills were found in a number  
18 of different types of packaging, one of which would suggest use of  
19 the drugs.

20 I mean, it is correct that they were found mixed together  
21 in multiple different packages, multiple different bottles;  
22 correct?

23 MR. RAMSEYER: Yes, Your Honor.

24 THE COURT: Even in this -- this bullet charm, there was  
25 even controlled substances found in it?

1 MR. RAMSEYER: The what, Your Honor?

2 THE COURT: The bullet charm. I mean, there's like a  
3 container shaped like a bullet?

4 MR. RAMSEYER: Yes. I think it was a pill holder. It is  
5 shaped like a bullet.

6 THE COURT: I have never seen a pill holder -- it was  
7 something shaped like a bullet. I mean -- well, maybe they really  
8 do sell pill holders shaped like bullets.

9 All right. Any further argument, Mr. Ramseyer?

10 MR. RAMSEYER: No, Your Honor.

11 THE COURT: Mr. Sipe, any further argument, sir?

12 MR. SIPE: No, ma'am.

13 THE COURT: All right.

14 Insofar as we're dealing with the issue of probable  
15 cause, I find that the affidavit -- the evidence contained in the  
16 affidavit along with the testimony today of the agent does show  
17 probable cause for the charge of possession with intent to  
18 distribute the Schedule II controlled substances.

19 Now, I do appreciate your argument, Mr. Sipe. And that  
20 is that that goes to refute that evidence. But I don't think that  
21 that takes away from the probable cause finding.

22 Now, one thing I wanted to mention too while we are here  
23 today, when Mr. Smithers originally appeared, I had gone ahead and  
24 released him on bond. He was released pretty much on my standard  
25 conditions of bond. I just wanted to make sure, now that he has

1 retained counsel, that there's no issue with regard to his  
2 conditions of release.

3 MR. SIPE: No, ma'am.

4 THE COURT: Okay.

5 MR. SIPE: Well, one thing we did want to address, if  
6 Your Honor would be willing, is one of the conditions of the  
7 original bond was that Dr. Smithers not prescribe scheduled  
8 narcotics.

9 THE COURT: Yes, sir.

10 MR. SIPE: And I believe -- I wasn't here; if I'm  
11 incorrect, I apologize -- that there was some discussion at that  
12 time about Dr. Smithers' participation in the Virginia Health  
13 Practitioners Monitoring Program. I don't know how familiar Your  
14 Honor is with that. But, essentially, it is a program through the  
15 Virginia Board of Medicine where an individual -- with the Board of  
16 Medicine, it is physicians -- their license to practice, to  
17 prescribe, is suspended for in this case it was some substance  
18 abuse and some other issues. And then they are asked to enter into  
19 a contract with the Virginia Health Practitioners Monitoring  
20 Program, which is usually a five-year contract. In this case  
21 Dr. Smithers has entered into that contract. He first entered into  
22 it in February of 2016.

23 And, in essence, what that provides is, as long as the  
24 practitioner is enrolled in the program, that he or she is able to  
25 continue to practice medicine. They are able to prescribe. What

1 they are required to do is to submit to random urine screens. And  
2 I believe, since the inception of Dr. Smithers' enrollment in the  
3 program, he has had close to a hundred urine screens; all have been  
4 negative.

5 You also have a case manager, almost like a probation  
6 officer, through that program, that you are to communicate with on  
7 a scheduled time frame, and also have a peer monitor. In this case  
8 it is an anesthesiologist from -- Lawrenceville?

9 THE DEFENDANT: Lawrenceville, and he works in  
10 (inaudible).

11 MR. SIPE: -- from Lawrenceville, who also works in  
12 Roanoke.

13 And then also to participate in AA, NA, as well as what  
14 is called Caduceus, which is AA and NA for doctors, lawyers,  
15 architects, professionals.

16 So we would ask that Dr. Smithers' condition of not being  
17 able to prescribe be modified in his bond condition. There is  
18 clear oversight through the HPMP program, through the peer monitor.  
19 I have a copy of --

20 THE COURT: Do I understand you correct that this is  
21 something he entered into more than a year ago?

22 MR. SIPE: Yes, ma'am. And there -- they are familiar  
23 -- the HPMP -- the Board of Medicine, through the HPMP program, is  
24 aware of these charges, the allegations that are being made against  
25 him. And he remains in that program. They reviewed all of the

1 materials and made a decision to continue him in the program.

2 THE COURT: And this was as a result of him losing his  
3 license?

4 MR. SIPE: Well, no. It is usually based on -- here is a  
5 typical example: a doctor in the hospital or a nurse at the  
6 hospital, either there's some complaint or investigation opened  
7 with the Board of Health Professionals about that person's ability  
8 to practice. And so the Board of Medicine, in this case, initiates  
9 an investigation. And then the practitioner is basically told,  
10 "Look, you need to address whatever this underlying issue is.  
11 Until you do that, you are not to practice."

12 And then, once that initial stage is completed, then  
13 sometimes they are offered one of these contracts, which basically  
14 says, "We're going to let you continue to practice, not right away,  
15 but when your case manager says that you can." So there is a time  
16 frame where they are just to follow the terms of the contract, get  
17 their urine screens, do their programs. And then a case manager  
18 makes a determination whether they are safe to practice in their  
19 view. And so in this case that determination was made in 2016.

20 And then, once -- or in the present day, the program is  
21 aware of all that is going on in this case and has made a  
22 determination to allow Dr. Smithers to practice. Not allowing  
23 Dr. Smithers to practice is akin to not letting him work --

24 THE COURT: Well, and that was my reasoning behind not  
25 taking his -- or not ordering his condition of bond he could not

1 practice medicine. It was -- the condition of bond was designed to  
2 allow him to try to practice medicine, but not to be able to  
3 prescribe the medications that, in essence, at best there's  
4 evidence of him improperly having them, you know, looking at the  
5 evidence in the light most favorable to Mr. Smithers. It certainly  
6 is not proper for him to have those. It arguably is very illegal  
7 for him to have those and to take possession of them from other  
8 people, even if things were done according to his statement, that  
9 he was taking them back from his patients. So that was very  
10 troubling to the Court.

11 And as I understand it, you are saying that he is under  
12 the auspices of this agreement. I mean, how do they double-check  
13 that his subscription -- or his subscribing of controlled  
14 substances is appropriate?

15 MR. SIPE: Well, I think that's the peer -- that's the  
16 peer monitoring. And so one of the things -- we thought we would  
17 kind of raise this issue today, since we're all here. One of the  
18 things that we were going to attempt to propose, understanding the  
19 Court's reluctance to just say, "Here, have back at it," is to try  
20 to craft some sort of -- maybe for a different day and a different  
21 courtroom, but some sort of plan that would incorporate this peer  
22 review, who is actually an actual practicing physician, to in some  
23 way oversee prescriptions that are being written.

24 It would be impractical for that physician to actually  
25 sign prescriptions. In fact, that might be illegal. But in some

1 way of having some kind of an accounting or something, some kind of  
2 oversight as to prescriptions that are being written, for whom and  
3 for what, and have there be this outside physician practitioner  
4 having some oversight --

5 THE COURT: And I understand that. And I'm not saying  
6 that -- I'm not going to preclude that. Okay? I'm not saying that  
7 there's no evidence that you could present me that I wouldn't -- I  
8 would not entertain. Okay? But I'm kind of surprised --

9 Could you email Debbie Foster and ask her to send me  
10 Mr. Smithers' pretrial report? I don't have it before me.

11 But I'm kind of surprised by you telling me that he has  
12 entered into one of these agreements previously, because that would  
13 indicate that there had been some problem previously. And by you  
14 telling me that the agreement calls for him to take urine screens  
15 and/or complete certain NA or AA meetings suggests to me that it is  
16 a substance abuse problem. And I am going to ask to see the  
17 pretrial report. But I want to say Mr. Smithers completely denied  
18 any prior substance issues when he spoke to pretrial services.

19 MR. SIPE: Well, if you -- and I'm happy to hand up the  
20 contract. The actual reason behind the contract was not a  
21 substance abuse issue. It was an anxiety disorder type of  
22 depression issue.

23 THE COURT: Then why would he have to take drug screens?

24 MR. SIPE: Because it is part of the contract.

25 THE COURT: Well, let me see the contract.



1           And did you send that to Debbie?

2           MR. SIPE: And urine screens are a standard part of the  
3 contract.

4           THE COURT: Okay. And that may be. I don't -- I'm not  
5 familiar enough with it on the medical side.

6           (Pause.)

7           THE COURT: I'll just get my email up so I can see if she  
8 has sent it.

9           (Pause.)

10          THE COURT: Mr. Ramseyer, have you seen this? Would you  
11 like to see it?

12          MR. RAMSEYER: I have seen it, Your Honor.

13          THE COURT: Okay. All right.

14          MR. RAMSEYER: I don't have a copy, but I have seen it.

15          THE COURT: All right.

16          MR. RAMSEYER: Mr. Sipe had showed it to me prior to the  
17 hearing.

18          THE COURT: I guess, Mr. Sipe, if your request today is  
19 for me to alter that condition, my response would be that I don't  
20 believe I have the evidence before me that would justify doing so.  
21 I'm not going to say that there isn't some arrangement that can be  
22 made that would -- for instance -- and I understand what you are  
23 saying is that there may not be arrangements that can be made where  
24 another health care provider comes into the practice. But there  
25 may be arrangements that can be made with another physician who

1 would agree to review the records weekly or monthly with regard to  
2 prescribing -- it is hard for me to imagine right now what -- what  
3 would satisfy my concerns. But I don't want to tell you that  
4 there's not evidence that wouldn't. Okay? I can imagine there  
5 might be some evidence that would satisfy my concerns, if, indeed,  
6 Mr. Smithers has not lost his DEA privileges thus far. And, of  
7 course, that's a separate issue, an administrative issue, not an  
8 issue for this Court to be involved in. But that may be an issue  
9 that he will face before the criminal matters are determined. But  
10 I don't want to say that there is not some scenario under which I  
11 might allow it. I guess I would have to see what you would  
12 propose.

13 MR. SIPE: Yes, ma'am. I think the key is going to be  
14 (inaudible) the anesthesiologist or another prescribing medical  
15 doctor.

16 THE COURT: Now, let me say this, because I am surprised  
17 by this. I am looking at his -- I'm looking at his pretrial  
18 report. And I'm going to read you the entire mental health  
19 section.

20 It says, "The defendant reported a history of mental  
21 health issues, but is not presently experiencing any active  
22 symptoms." And that would have been -- this is based on his  
23 interview at the time of his arrest. "In 2014 he was referred by  
24 the North Carolina Physicians Health Program to attend counseling  
25 for approximately six months. He advised that for approximately a

1 month around this time period he was prescribed Lexapro." He did  
2 not report any continuing mental health issues. He did not report  
3 any ongoing supervision by any type of Board of Health  
4 Professionals agency. And he did not report that he was taking any  
5 other prescription medication.

6 I will assume that I placed upon him a condition of open  
7 communications, because I typically do.

8 Let me just get to this file a moment, if I may.

9 (Pause.)

10 THE COURT: I will note that he apparently did not reveal  
11 to the officer that he had any problems with anxiety, because the  
12 only medication he listed was an antidepressant medication, not an  
13 anti-anxiety medication.

14 What I'm hearing today brings up the necessity, I think,  
15 for some additional conditions of release to be placed upon  
16 Mr. Smithers. And I intend to do so.

17 I will just point out that he has an ongoing obligation  
18 under the conditions I previously imposed upon him to keep his  
19 supervising officer abreast of any medications that he takes. At  
20 the time that he came here, he told us that he took none. So if  
21 that's incorrect information, he needs to make the officer aware of  
22 that.

23 MR. SIPE: That's correct.

24 THE COURT: Okay. I'm just advising that he has a  
25 continuing obligation to keep them aware of that.

1           I mean, I won't -- I won't preclude the scheduling of a  
2       hearing for me to hear whatever your plan is. I don't know what  
3       that would be. But I'm also -- you know, I can't give you an  
4       advisory opinion one way or the other.

5           MR. SIPE: I understand.

6           THE COURT: But I can imagine that there might be some  
7       scenario under which, with supervision, it might be allowed.

8           I would suspect that if this matter goes forward  
9       Mr. Smithers may have the bigger issue of the fact that the DEA may  
10      act on his -- as I have seen it happen before, prior to conviction  
11      -- may suspend his privileges. So -- but I would be open to it,  
12      Mr. Sipe.

13          MR. SIPE: And we fully expect it. I just wanted to  
14      throw that out there.

15          THE COURT: Now, what I will do today, based on what I  
16      have heard here, is I'm going to put a number of other conditions  
17      on. And that is that --

18          May I see that contract again so that I can get the  
19      wording correct here?

20          I am going to order that he must continue in his  
21      -- Mr. Smithers must continue in his mental health treatment at his  
22      expense and as required by the Virginia Health Practitioners  
23      Monitoring Program, HPMP; that he has to stay in compliance with  
24      his HPMP contract; and that he must allow open communications not  
25      only between any treatment agencies, mental health care providers,

1 physical health care providers, and his supervising officer, but  
2 also he's going to have to allow open communications between his  
3 supervising officer and the Board of Healthcare Professionals  
4 and/or the monitoring program of the Department of Health  
5 Professionals.

6 MR. SIPE: I believe, Your Honor, there has already been  
7 a release (inaudible).

8 THE COURT: I don't know that -- I don't think he signed  
9 a release that would cover that, because, I'll be honest with you,  
10 I don't think any of us knew this when it came before us before.  
11 If I did, I have forgotten it.

12 I don't recall it being an issue in the bond hearing. Do  
13 you, Mr. Ramseyer?

14 MR. RAMSEYER: Your Honor, I wasn't here at the bond  
15 hearing --

16 THE COURT: You didn't cover the bond hearing.

17 MR. RAMSEYER: -- so I don't want to say.

18 THE COURT: I don't recall it at all. Not to say that I  
19 would, necessarily, but --

20 MR. SIPE: It is coming from HPMP. They had asked --  
21 when they were advised of what is going on here, asked for  
22 permission.

23 THE COURT: Okay. That's good. That's good. But, you  
24 know, knowing that Mr. Smithers is in this program, just so far as  
25 supervising him, greatly concerns me about his possession of these

1 medications.

2 I mean, obvious, you know, no matter if I should allow  
3 him to go back to prescribing controlled substances, there would be  
4 a condition stating that he cannot take any further medications  
5 from his patients. Okay?

6 But, I mean, if you want to schedule a hearing, I'll be  
7 glad to hear the evidence on it.

8 MR. SIPE: Yes, ma'am.

9 THE COURT: Okay. Now, Mr. Smithers, if you'll stand  
10 with your counsel so I might address you.

11 The next stage in the proceedings, sir, is your case has  
12 to go before a grand jury. That should occur in the next 30 days.  
13 The grand jury has to consider your case. It may or may not return  
14 an indictment against you. If the grand jury doesn't charge you,  
15 doesn't return an indictment against you, the case against you will  
16 be dismissed.

17 If the grand jury does return an indictment against you,  
18 finds there's probable cause to charge you with a crime, then we'll  
19 contact Mr. Sipe. We'll schedule you back in for what is called an  
20 arraignment. And at that time you'll be notified of what the  
21 charges are. The Court will take your formal pleas to the charges  
22 and would set your trial date at that time. Okay?

23 I can't tell you when the next date is that you'll have  
24 to appear, because, first of all, I don't know if the grand jury  
25 will indict. If they do indict, however, we'll simply contact your

1 counsel. And your counsel will contact you. And we'll schedule a  
 2 date for you to appear. You must follow his directions, though,  
 3 and appear as the Court requires you to appear to be in compliance  
 4 with your conditions of bond. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. Is there anything further we need  
 7 to take up today?

8 MR. RAMSEYER: No, Your Honor.

9 THE COURT: All right. If not, then the Court will stand  
 10 in adjournment. Thank you.

11 (Thereupon, these proceedings were adjourned at 3:42 p.m.)  
 12

# 13 EXAMINATION INDEX

14 ANITA SOWERS, DEFENSE WITNESS

15 DIRECT BY MR. SIPE . . . . . 4  
 16 CROSS BY MR. RAMSEYER . . . . . 8

17  
 18  
 19 I, court-approved transcriber, certify that the foregoing is a  
 20 correct transcript from the official electronic sound recording of  
 21 the proceedings in the above-entitled matter.  
 22

23 \_\_\_\_\_ April 24, 2019  
 24 /s/ Carol Jacobs White  
 Signature of Approved Transcriber Date  
 25